



January 31, 2001

Ms. Jane Olinger  
Associate General Counsel  
University of Houston System  
E. Cullen Building, Suite 311  
Houston, Texas 77204-2162

OR2001-0380

Dear Ms. Olinger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143994.

The University of Houston-Clear Lake (the “university”) received a request for the requestor’s personnel file and “copies of all documents, including but not limited to e-mails, memos, and other documents related to my grievance.” You state that you are releasing a copy of the requestor’s personnel file. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.<sup>1</sup>

First, you state that you seek an advisory opinion as to the limitation and scope of disclosure of responsive items. Section 552.022(b) of the Government Code provides the following:

If what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request. If a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.

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<sup>1</sup>In reaching our conclusion here, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.222(b). Thus, if the university is uncertain about the scope of the request, the university may ask the requestor to clarify the request and discuss with the requestor how the scope of the request might be narrowed.

You assert that the submitted information, Exhibits B, G, and H, are excepted from public disclosure under section 552.103 of the Government Code. Section 552.103(a) provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Further, litigation must be pending or reasonably anticipated on the date the requestor applies to the public information officer for access. Gov't Code § 552.103(c).

You have provided this office with a copy of an original petition of a lawsuit filed by an attorney representing the requestor against the university and its employees based on Chapter 554 of the Government Code.<sup>2</sup> You have also provided a copy of a letter from the attorney titled "formal notice of claim pursuant to the Whistle-Blower Act." Therefore, we conclude that you have demonstrated that litigation is pending and that the submitted information is related to the pending litigation.

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). Although you state that information that has been seen or created by the opposing party has been released, we have marked some documents that appear to have been seen by the opposing party, and therefore, may not be withheld under section 552.103. Further, the marked documents that have been seen by the opposing party cannot be considered attorney-client communications under section 552.107 or interagency or intra-agency memoranda under section 552.111. The university may withhold the remaining documents in Exhibits

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<sup>2</sup>Chapter 554 of the Government Code is referred to as the "Whistle-Blower Act."

B, G, and H under section 552.103.<sup>3</sup> We note that the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

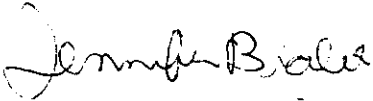
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Scholoss at the General Services Commission at 512/475-2497.

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<sup>3</sup>Because you may withhold the submitted information, with the exception of documents seen by the opposing party, under section 552.103, we need not address the applicability of sections 552.107 or 552.111 to the withheld information.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Bialek".

Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/er

Ref: ID# 143994

Encl: Submitted documents

cc: Ms. Graciela Lubertino  
4377 Harvest Lane  
Houston, Texas 77004  
(w/o enclosures)